

Service Date: September 11, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of)	TRANSPORTATION DIVISION
H.R. Roberts and Sons for and Order)	
to Show Cause Why Certain Authority)	DOCKET NO. T-9455
of Watkins and Shepard, Inc. Should)	
Not be Declared Null and Void.)	ORDER NO. 5951

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RESPONSE TO PETITION AND ORDER

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BACKGROUND

On August 16, 1989 the Public Service Commission (Commission) received a Petition from H.R. Roberts and Sons (Roberts) requesting that the Commission issue an order to show cause why certain Class C authority held by Watkins and Shepard Trucking, Inc. (Watkins and Shepard) should not be declared null and void. The authority at issue is PSC No. 5083 (Sub B), which allows Watkins and Shepard to transport under contract "U.S.D.A. Donated Foods, between all points and places in the State of Montana."

Roberts contends that this authority 1) violates 69-12-313(2), MCA, which requires a separate application for each route or locality, and 2) that the authority was illegally granted in that Watkins and Shepard's application did not conform to 69-12-313(4), MCA.

DISCUSSION

Section 69-12-313(2), MCA, reads in part as follows: "A motor carrier making application for a Class C5 permit shall do so in writing, separately for each route or locality for which consideration is desired," Roberts argues that a state-wide authority for "all points and places in the State of Montana" violates this provision that applications be made "separately for each route or locality for which consideration is desired," The Commission can see no merit to this argument. The term "locality" encompasses the State of Montana as well as discrete parts thereof. The Commission considers an application for state-wide Class C authority to be a separate application for the locality desired, and thus in conformance with 69-12-313(2), MCA.

Section 69-12-313(4), MCA, reads in its entirety as follows:

(4) The submission of a Class C motor carrier application must be accompanied by the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. Such contracts must be in writing, executed by the parties and submitted to the commission for examination.

Roberts contends that the application for the Class C certificate in question was not processed in conformance with this section, and that the Commission therefore had no jurisdiction to issue the certificate. Absent Commission jurisdiction, Roberts argues, the certificate is null and void.

The Commission concedes that it has failed to comply with 69-12-313(4), MCA, when processing Class C motor carrier applications. In addition, the Commission has not complied with certain requirements imposed by 69-12-302(1), MCA. These failures were inadvertent on the part of the Commission and its staff. They were in no way a result of a deliberate attempt to circumvent the statutes or to flaunt the legislative authority under which the Commission acts.

Despite the failure to strictly follow statutory procedure in administering Class C applications and authorities, the Commission does not accept Robert's suggested remedy. As noted, Roberts contends that because Watkins and Shepard's application for Class C authority to transport U.S.D.A. foods was not processed in conformance with the statutes, the authority granted as a result of that application should be declared null and void. Roberts, however, has identified a general defect in Commission procedure; the Commission's failure to comply with 69-12-313(4), MCA, and 69-12-302(1), MCA, applies not only to Watkins and Shepard, but to most, if not all Class C carriers in Montana. If Roberts is correct that Watkins and Shepard's PSC Certificate No. 5083 (Sub B) is null and void, then so are the authorities of these other carriers, including Class C authority held by Roberts.

While acknowledging its obligation to comply with all statutory directives, the Commission finds that the procedural defects identified above are technical and not substantive. The Commission finds that the failure to comply strictly with those statutes has not prejudiced the substantive due process rights of either applicants for Class C authority or holders of Class C authority. Substantive due process rights such as proper notice, opportunity for hearing, and decision according to statutory criteria have always been afforded to applicants and existing carriers. Further, existing Class C carriers have complied with requirements imposed by the Commission. To now declare most (if not all) Class C authorities void as a result of technical error by the Commission in not requiring certain documentation and information seems both unjust and unnecessary.

Therefore, the Commission will direct its staff to take immediate steps to bring the administration of Class C motor carrier applications and authorities into compliance with 69-12-313(4), MCA, and 69-12-302(1), MCA. Specifically, the Commission will require that all Class C motor carrier applications must be accompanied by an executed, written contract between the applicant and the shipper(s) supporting the application. (The contract will become effective upon

the grant of authority.) In addition, the Commission will require that before transportation can commence under additional, or new contracts, pertinent contract information must be filed with the Commission on a form to be prescribed. An approved copy of that form will be required in the cabs of affected motor carriers.

CONCLUSIONS OF LAW

1. The Commission supervises and regulates certain contract motor carriers in Montana pursuant to Title 69, Chapter 12, MCA, specifically sections 69-12-301, 69-12-302 and 69-12-313, MCA.

ORDER

Now Therefore it is Ordered that the Petition of H.R. Roberts and Sons for an Order to Show Cause Why Certificate PSC No. 5083 (Sub B), held by Watkins and Shepard Trucking, Inc. should not be declared null and void, is denied.

Done and Dated this 11th day of September, 1989 by a vote of
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.